

### **REMARKS**

Claims 58, 67-71 and 73-76 are rejected under 35 U.S.C. § 102(e) as being anticipated by U.S. Patent No. 6,263,317 to Shawn T. Sharp, et al. The remainder of the claims, that is, Claims 59-66 and 72, are rejected under 35 U.S.C. § 103(a) as being unpatentable over the Sharp '317 patent in view of U.S. Patent No. 6,029,141 to Jeffrey P. Bezos, et al. As described below, independent Claims 58 and 70 have again been amended to further patentably distinguish the claimed invention from the cited references, taken either individually or in combination. Applicant also notes the objections to the drawings and is attending to the preparation of formal corrections. Upon completion of the corrected drawings, the formal drawings will be submitted to the Office. In light of the foregoing amendments and the following remarks, Applicants respectfully request reconsideration of the present invention and allowance of the amended set of claims.

In general terms, the server system of one advantageous embodiment of the present invention permits customers to submit orders for a product over a public access network, such as the Internet, directly to a manufacturer, while processing and accounting for the orders in such a manner as to permit the established distributor(s) and/or manufacturer representative(s) of the manufacturer who are not otherwise involved in the generation of the customer's order to profit from the transaction, generally in much the same manner as if the distributor had generated the order. As such, the server system of the present invention provides another marketing and sales channel for a manufacturer, while maintaining the goodwill and cooperation of established distributors and manufacturer representatives who work with the manufacturer in the more traditional marketing and sales channels.

As recited by the claimed invention, the server system and, in particular, a receiver component receives requests to order a product that include a product code identifying the product and a customer identification identifying the customer. As set forth by independent Claims 58 and 70, the receiver component receives the requests (that are submitted by a customer) on behalf of the manufacturer. The server system also includes a data storage medium for storing information regarding the products that are for sale, including the price associated with each of the products. Typically, this pricing information is provided, in total or in part, by

the respective distributors such that the price for the same item may vary from distributor to distributor. In conjunction with the recitation relating to the customer price that is stored by the data storage medium, a duplicative recitation has been eliminated from Claim 70.

Although the order was placed with the manufacturer in a manner that was independent of the typical distribution chain, the server system notifies one of the established distributors for the manufacturer, such as the distributor who likely would have received the order if the order had been placed through conventional channels, and requests that the distributor provide financial authorization for the sale of the product to the customer. In this regard, many customers have customer accounts with one or more distributors which are relied upon by the server system of this embodiment to finance the purchase of a product by the customer. As such, the server system and, in particular, the receiver component not only receives requests from a customer to order a product, but also financial authorization from a distributor that verifies the customer's account. As recited by amended independent Claim 58, even though the distributor was not involved in the generation of the order of the product as in conventional sales activities, the server system of the claimed invention still looks to the distributor to provide financial authorization for the transaction, such as by providing the manufacturer with a purchase order number. In return, the distributor will profit from the sale of the product to the customer as described below.

Once authorized, the server system and, in particular, an order placement component places an order with the manufacturer for the product identified by the request. The server system also includes an order fulfillment component that completes the purchase of the product. As now recited by amended independent Claim 58, the order fulfillment component makes arrangement for shipping by the manufacturer and billing of the distributor. Thus, although the manufacturer ships the product, the distributor is billed for the product. As described by the present application and following the model of conventional sales activities, the customer or an outside payment source, such as Visa, pays the distributor such that the distributor makes a profit, as opposed to a commission, on the sale of the product based upon the difference between the payment to the distributor by the customer and the payment submitted to the distributor by the manufacturer. Thus, the server system of the claimed invention operates with the customer

remaining a customer of the distributor, even though the request is received on behalf of the manufacturer and even though the product is thereafter shipped by the manufacturer.

In one advantageous embodiment set forth by amended independent Claim 70, the server system also compensates an agent, such as a manufacturer representative, for the sale of the product to the customer, even though the agent was not involved in the generation of the order. In this regard, the data storage medium of independent Claim 70 also includes agent information having at least one predetermined variable associated with each of the agents. In addition, the server system of Claim 70 includes a commission component that determines a commission and assigns the commission to one of the agents based on one of the predetermined variables. For example, the variables may relate to the territory covered by the respective agents such that the commission component assigns a commission to the agent who covers the territory that includes the location of the customer. As now recited by amended independent Claim 70, the commission component compensates the agent, even though that agent was not involved in the generation of the order and even though the request was fulfilled in a manner independent of the agent. Thus, the server system does not disenfranchise the agents, such as manufacturer representatives, such that the agents will remain loyal to the manufacturer during more conventional sales activities.

Turning now to the cited references, that is, the Sharp '317 patent and the Bezos '141 patent, the Sharp '317 patent describes a system for resolving conflict between competing sales channels for orders submitted via the Internet. In this regard, a web-based system is provided that permits customers to place orders online. Depending upon inventories and the like, the order can be fulfilled by the manufacturer, by one or more distributors or by one or more retailers. As such, the web-based system implements a distribution channel conflict resolution scheme in order to properly provide for the fulfillment of the order without violating existing distribution agreements between the manufacturer and its distributors and retailers. In one embodiment, the Sharp system initially determines whether the manufacturer can fulfill the order. If the manufacturer's inventory is insufficient to fulfill the order, the Sharp system then allocates the order to a distributor based upon a set of predefined rules and similarly determines if the distributor's inventory can permit the order to be fulfilled. If not, the Sharp system determines if other distributors are available (again based on a predefined rule set) and, if so,

successively determines if the inventories of these other distributors are sufficient to fulfill the order.

Regardless of which party fulfills the order, the customer is described to have initially submitted credit card or other payment information to the web-based system. This credit card or other payment information is verified and upon fulfillment of the order, the credit card is debited for the cost of the product and any taxes and shipping and handling. Funds are then transferred to the entity who supplied the product as well as the shipping company.

The Sharp '317 patent fails to teach or suggest the claimed invention and, in particular, the server system of amended independent Claims 58 and 70. In this regard, the Sharp '317 patent does not teach or suggest a receiver component that receives, on behalf of a manufacturer, a request for a product, as recited by both amended independent Claims 58 and 70. Instead, the web-based system of the Sharp '317 patent receives orders for products from customers, but not on behalf of a manufacturer. Instead, the Sharp web-based system receives orders and then executes a channel conflict resolution scheme to determine the entity that will fulfill the order with the entity sometimes being the manufacturer but other times being a distributor or retailer.

The Sharp '317 patent also fails to teach or suggest a receiver component for receiving financial authorization from a distributor with the financial authorization including an acknowledgement from the distributor verifying a customer account even though the request is received by the receiver component in a manner independent of the distributor, as recited by amended independent Claim 58. The Sharp '317 patent, instead, discloses traditional credit card verification and processing and, as such, does not teach or suggest looking to the distributor for any type of financial authorization. In fact, the web-based system of the Sharp '317 patent obtains credit card authorization early in the process (see Step 312 in Figure 3) before the distribution channel conflict resolution scheme determines which entity will ship the product. At the time of credit card authorization, the Sharp system would therefore be unable to determine which distributor would be appropriate to provide financial authorization since it is only well after the credit card authorization that the Sharp system determines which entity will fulfill the order.

As now recited by amended independent Claim 58, the order fulfillment component completes the purchase of the product in accordance with the order placed by the order placement component, including “arrangement for shipping by the manufacturer and billing of the distributor.” As described above, the web-based system of the Sharp ‘317 patent only provides for shipment by the manufacturer in some instances, with distributors or retailers shipping the product in other instances in accordance with the distribution channel conflict resolution scheme. Additionally, the Sharp ‘317 patent does not teach or suggest billing the distributor, as now recited by amended independent Claim 58. Instead, the customer’s credit card account is debited for the cost of the product. The funds are then transferred to the supplier (the entity that shipped the product), be it the manufacturer, distributor or retailer. In no event does the Sharp ‘317 patent teach or suggest billing the distributor. In contrast, the server system of independent Claim 70 bills the distributor in the same manner that a distributor is billed during normal sales activities, even though the manufacturer ships the product, and the distributor is not involved in either the receipt of the request by the receiver component or the shipment of the product by the manufacturer. As described above, however, the customer still generally pays the distributor, with the distributor making a profit based upon the differential between the payment submitted by the customer and the amount that the manufacturer has billed the distributor.

With respect to amended independent Claim 70, in addition to the distinctions based upon the receipt of the request to order a product on behalf of the manufacturer, the server system also includes a data storage medium with information for a plurality of agents associated with a product and including at least one predetermined variable associated with each of the agents. The server system of independent Claim 70 also includes a commission component for determining a commission and assigning the commission to one of the agents based upon the plurality of predetermined variables, even though the request is received by the receiver component in a manner independent of the agent. Moreover, independent Claim 70 has now been amended to further recite that the request is also fulfilled in a manner independent of the agents. The Sharp ‘317 patent does not teach or suggest the involvement of any agents, such as manufacturers’ representatives, as recited by the claimed invention. Instead, the entities that are potentially involved in the transaction contemplated by the Sharp ‘317 patent include

manufacturers, distributors or retailers, with no provision being made for agents. Moreover, the Sharp '317 patent does not teach or suggest the payment of any type of commission to an agent or otherwise. Instead, the only payment that is described is to the entity who ships the product in fulfillment of the order and to the shipping company.

In order to further highlight the distinctions between the agents that are addressed by amended independent Claim 70 and the various entities that interact with the web-based system of the Sharp '317 patent, Claim 70 has now been amended such that the request is both received and fulfilled in a manner independent of the agent, even though the agent is also recited to receive a commission. In contrast, the only entities, other than the operator of the web-based system, who are paid, are the entity that ships the product and the shipping company, both of whom are intimately involved in the fulfillment of the request.

For each of the foregoing reasons, the server system of amended independent Claims 58 and 70 is not taught or suggested by the Sharp '317 patent. Based upon their dependency, Claims 59-69 and 71-76 are likewise not taught or suggested by the Sharp '317 patent.

In conjunction with at least some of the claims, the Official Action combines the Bezos '141 patent with the Sharp '317 patent. Applicant submits, however, that the cited references cannot properly be combined. In order to properly combine references, a teaching or motivation to the combine the references is essential. *In re Fine* 337 F.2d 1071, 1075 (Fed. Cir. 1988). In fact, the Court of Appeals for the Federal Circuit has stated that, "[c]ombining prior art references without evidence of such a suggestion, teaching, or motivation simply takes the inventor's disclosure as a blueprint for piecing together the prior art to defeat patentability -- the essence of hindsight." *In re Dembiczak* 175 F.3d 994 (Fed. Cir. 1999). Although the evidence of a suggestion, teaching or motivation to combine the references commonly comes from the prior art references themselves, the suggestion, teaching or motivation can come from the knowledge of one of ordinary skill in the art or the nature of the problem to be solved. *Id.* In any event, the showing must be clear and particular and "[b]road conclusory statements regarding the teaching effect of multiple references, standing alone, are not 'evidence'." *Id.*

In the present application, the requisite motivation or suggestion to combine the references is lacking. As described above, the Sharp '317 patent describes a single web-based

system for receiving requests for products that can, in turn, be provided by any of a number of different entities, including manufacturers, distributors and retailers. In contrast, the Bezos '141 patent describes an on-line associate referral program in which multiple websites advertise a merchant's products and drive traffic to a merchant's website, but there remains only a single source of the products – the merchant. As described by the Bezos '141 patent, the merchant could be a distributor, such as Amazon.com, Inc. In order to increase sales, associates, such as other business entities, may be registered by the merchant. These associates also have websites that are related in some fashion to the product(s) sold by the merchant. In the example provided by the Bezos '141 patent, the associate websites provide book reviews or otherwise describe books that are sold via the merchant website. As such, the associate website may include hyperlinks to direct a potential customer from the associate website to the merchant website if the customer is interested in purchasing the book that is reviewed or otherwise described by the associate website. As such, while customers can continue to go directly to the merchant website in a conventional manner, other customers can arrive at the merchant website via a hyperlink from an associate website.

Thus, the Sharp '317 patent describes a single website that derives orders that are fulfilled from a number of different entities, while the Bezos '141 patent describes a multiplicity of websites that derive orders fulfilled from a single entity. The references therefore describe two diametrically opposed techniques for on-line order generation and fulfillment, such that the requisite suggesting, teaching or motivation to combine is lacking.

Even if the references were combined, however, Applicant submits that the server system of the claimed invention is not taught or suggested. In this regard, like the Sharp '317 patent, the Bezos '141 patent also fails to teach or suggest a receiver component that receives financial authorization from the distributor that includes an acknowledgement from the distributor verifying a customer account, even though the request is received in a manner independent of the distributor, as recited by independent Claim 58. Instead, the only financial authorization discussed by the Bezos '141 patent relates to the passing of a credit card number from the associate's website to the merchant's website, but in no event involves the receipt of any type of financial authorization from the distributor based upon verification of a customer account, as

recited by amended independent Claim 58. Like the Sharp '317 patent, the Bezos '141 patent also fails to teach or suggest an order fulfillment component that completes a purchase of a product by making arrangements for shipping by the manufacturer and billing of the distributor, as now also recited by amended independent Claim 58. In this regard, the Bezos '141 patent also fails to teach or suggest billing the distributor, as recited by amended independent Claim 58. Further, the Bezos '141 patent fails to teach or suggest the commission component of the server system of amended independent Claim 70, which determines and assigns a commission to one of the agents, even though the request was received in a manner independent of the agent. As described by the Bezos '141 patent, commissions are attributed to associates, but only those associates that are directly involved in the generation of the order.

As such, even if the Bezos '141 patent were combined with the Sharp '317 patent, the resulting combination would still not teach or suggest the server system of amended independent Claims 58 and 70 for the reasons set forth above. Since Claims 59-69 and 71-76 include all of the recitations of the respective independent claims, any combination of the Sharp '317 patent and the Bezos '141 patent also fail to teach or suggest the dependent claims. As such, the rejections of Claims 58-76 under 35 U.S.C. §§102(e) and 103(a) are therefore overcome.

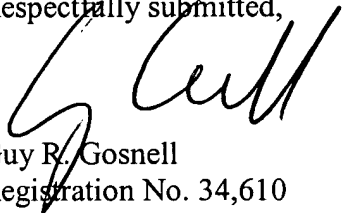


**CONCLUSION**

In light of the amended claims and the remarks submitted above, it is respectfully submitted that the present set of claims is in condition for immediate allowance. It is therefore respectfully requested that a Notice of Allowance be issued. The Examiner is encouraged to contact Applicant's undersigned attorney to resolve any remaining issues in order to expedite examination of the present application.

It is not believed that extensions of time or fees for net addition of claims are required, beyond those that may otherwise be provided for in documents accompanying this paper. However, in the event that additional extensions of time are necessary to allow consideration of this paper, such extensions are hereby petitioned under 37 CFR § 1.136(a), and any fee required therefore (including fees for net addition of claims) is hereby authorized to be charged to Deposit Account No. 16-0605.

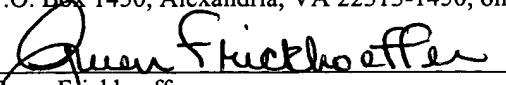
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